

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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TIMOTHY KRAFT,

Plaintiff,

v.

THE CITY OF NEW YORK, P.O. BRETT BARA,
P.O. JOSE BUENO, P.O.s JOHN AND JANE DOE
#1-10, INDIVIDUALLY AND IN THEIR
OFFICIAL CAPACITIES (THE NAMES JOHN AND
JANE DOE BEING FICTITIOUS, AS THE TRUE
NAMES ARE PRESENTLY UNKNOWN), THE NEW
YORK CITY HEALTH AND HOSPITALS
CORPORATION, DR. ELI GREENBERG, DR. FADI
HADDAD, DR. ALYSON MALLOY, DR. AMY
COHEN, AND HHC PERSONNEL JOHN AND JANE
DOE #11-20, E.M.S. SUPERVISOR JOHN DOE
#21, COMMON GROUND COMMUNITY H.D.F.C.,
INC., CENTER FOR URBAN COMMUNITY
SERVICES, ROSANNE HAGGERTY, STACY NERI,
DAWN BRADFORD, NANCY PROCARO, ORETHA
FRANKLIN, AND MICHAEL GIORDANO,

Defendants.
-----x

07 CV 2978 (DC)

ECF CASE

**ANSWER TO COMPLAINT
WITH CROSS-CLAIMS**

Pursuant to Rule 12(b)(4) and 12(b)(5), defendants Rosanne Haggerty, Nancy Procaro, Oretha Franklin and Michael Giordano present and assert the following defenses of insufficiency of service of process and insufficiency of process. Notwithstanding and without waiving its defenses, defendants, Common Ground Community HDFC, Inc., Rosanne Haggerty, Nancy Procaro, Oretha Franklin and Michael Giordano, by their attorneys, HOEY, KING, TOKER & EPSTEIN, answer the Complaint of the Plaintiff by stating as follows:

1. Defendants deny the allegations of paragraph "1".

2. Defendants deny the allegations of paragraph "2" and respectfully refer all questions of law to this Honorable Court.

3. Defendants deny the allegations of paragraph "3" and respectfully refer all questions of law to this Honorable Court.

4. Defendants deny the allegations of paragraph "4" and respectfully refer all questions of law to this Honorable Court.

5. Defendants deny the allegations of paragraph "5" and respectfully refer all questions of law to this Honorable Court.

6. Defendants deny having knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph "6".

7. Defendants deny having knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph "7".

8. Defendants deny having knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph "8".

9. Defendants deny having knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph "9".

10. Defendants deny having knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph "10".

11. Defendants deny having knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph "11".

12. Defendants deny having knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph "12".

13. Defendants deny having knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph "13".

14. Defendants deny having knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph "14".

15. Admit.

16. Defendants deny the allegations of paragraph "16" and respectfully refer all questions of law to this Honorable Court.

17. Deny, upon information and belief, the allegations of paragraph "17", except to admit that defendants Rosanne Haggerty, Nancy Procaro and Michael Giordano were employees of Common Ground Community HDLC, Inc. in May 2006.

18. Defendants deny having knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph "18".

19. Defendants deny having knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph "19".

20. Defendants deny the allegations of paragraph "20".

21. Defendants deny the allegations of paragraph "21".

22. Defendants deny the allegations of paragraph "22" and respectfully refer all questions of law to this Honorable Court.

23. Defendants deny the allegations of paragraph "23" and respectfully refer all questions of law to this Honorable Court.

24. Defendants deny having knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph "24".

25. Defendants deny having knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph "25".

26. Defendants deny having knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph "26".

27. Defendants deny having knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph "27".

28. Defendants deny having knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph "28".

29. Defendants deny having knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph "29".

30. Defendants deny the allegations of paragraph "30".

31. Defendants deny the allegations of paragraph "31".

32. Respond to paragraph "32" of the Complaint by repeating, reiterating, and re-alleging all responses given to the paragraphs referred to therein with the same force and effect as if herein set forth at length.

33. Defendants deny the allegations of paragraph "33".

34. Defendants deny the allegations of paragraph "34".

35. Defendants deny having knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph "35".

36. Defendants deny having knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph "36".

37. Defendants deny having knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph "37".

38. Defendants deny having knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph "38".

39. Defendants deny the allegations of paragraph "39".

40. Defendants deny the allegations of paragraph "40".

41. Defendants deny the allegations of paragraph "41".

42. Respond to paragraph "42" of the Complaint by repeating, reiterating, and re-alleging all responses given to the paragraphs

referred to therein with the same force and effect as if herein set forth at length.

43. Defendants deny the allegations of paragraph "43".

44. Defendants deny the allegations of paragraph "44".

45. Respond to paragraph "45" of the Complaint by repeating, reiterating, and re-alleging all responses given to the paragraphs referred to therein with the same force and effect as if herein set forth at length.

46. Defendants deny the allegations of paragraph "46".

47. Defendants deny the allegations of paragraph "47".

48. Defendants deny the allegations of paragraph "48".

49. Respond to paragraph "49" of the Complaint by repeating, reiterating, and re-alleging all responses given to the paragraphs referred to therein with the same force and effect as if herein set forth at length.

50. Defendants deny the allegations of paragraph "50".

51. Defendants deny the allegations of paragraph "51".

52. Defendants deny the allegations of paragraph "52".

53. Respond to paragraph "53" of the Complaint by repeating, reiterating, and re-alleging all responses given to the paragraphs referred to therein with the same force and effect as if herein set forth at length.

54. Defendants deny the allegations of paragraph "54".

55. Defendants deny the allegations of paragraph "55".

56. Defendants deny the allegations of paragraph "56".

57. Defendants deny the allegations of paragraph "57".

58. Defendants deny the allegations of paragraph "58".

59. Defendants deny the allegations of paragraph "59".

60. Defendants deny the allegations of paragraph "60".

61. Defendants deny the allegations of paragraph "61".

62. Defendants deny the allegations of paragraph "62".

63. Defendants deny the allegations of paragraph "63".

64. Defendants deny the allegations of paragraph "64".

65. Defendants deny the allegations of paragraph "65".

66. Defendants deny the allegations of paragraph "66".

67. Respond to paragraph "67" of the Complaint by repeating, reiterating, and re-alleging all responses given to the paragraphs referred to therein with the same force and effect as if herein set forth at length.

68. Defendants deny having knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph "68".

69. Defendants deny having knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph "69".

70. Defendants deny having knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph "70".

71. Defendants deny having knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph "71".

72. Defendants deny the allegations of paragraph "72".

73. Defendants deny the allegations of paragraph "73".

74. Respond to paragraph "74" of the Complaint by repeating, reiterating, and re-alleging all responses given to the paragraphs referred to therein with the same force and effect as if herein set forth at length.

75. Defendants deny the allegations of paragraph "75".

76. Defendants deny the allegations of paragraph "76".

77. Defendants deny the allegations of paragraph "77".

78. Respond to paragraph "78" of the Complaint by repeating, reiterating, and re-alleging all responses given to the paragraphs referred to therein with the same force and effect as if herein set forth at length.

79. Defendants deny the allegations of paragraph "79".

80. Defendants deny the allegations of paragraph "80".

81. Defendants deny the allegations of paragraph "81".

82. Defendants deny the allegations of paragraph "82".

83. Respond to paragraph "83" of the Complaint by repeating, reiterating, and re-alleging all responses given to the paragraphs referred to therein with the same force and effect as if herein set forth at length.

84. Defendants deny the allegations of paragraph "84".

85. Defendants deny the allegations of paragraph "85".

86. Defendants deny the allegations of paragraph "86".

87. Defendants deny the allegations of paragraph "87".

88. Respond to paragraph "88" of the Complaint by repeating, reiterating, and re-alleging all responses given to the paragraphs referred to therein with the same force and effect as if herein set forth at length.

89. Defendants deny the allegations of paragraph "89".

90. Defendants deny the allegations of paragraph "90".

91. Defendants deny the allegations of paragraph "91".

92. Defendants deny the allegations of paragraph "92".

93. Defendants deny the allegations of paragraph "93".

94. Respond to paragraph "94" of the Complaint by repeating, reiterating, and re-alleging all responses given to the paragraphs referred to therein with the same force and effect as if herein set forth at length.

95. Defendants deny the allegations of paragraph "95".

96. Defendants deny the allegations of paragraph "96".

97. Defendants deny the allegations of paragraph "97".

98. Defendants deny the allegations of paragraph "98".

99. Defendants deny the allegations of paragraph "99".

100. Respond to paragraph "100" of the Complaint by repeating, reiterating, and re-alleging all responses given to the paragraphs

referred to therein with the same force and effect as if herein set forth at length.

101. Defendants deny the allegations of paragraph "101".

102. Defendants deny the allegations of paragraph "102".

103. Defendants deny the allegations of paragraph "103".

104. Defendants deny the allegations of paragraph "104".

105. Respond to paragraph "105" of the Complaint by repeating, reiterating, and re-alleging all responses given to the paragraphs referred to therein with the same force and effect as if herein set forth at length.

106. Defendants deny the allegations of paragraph "106".

107. Defendants deny the allegations of paragraph "107".

108. Respond to paragraph "108" of the Complaint by repeating, reiterating, and re-alleging all responses given to the paragraphs referred to therein with the same force and effect as if herein set forth at length.

109. Defendants deny the allegations of paragraph "109".

110. Defendants deny the allegations of paragraph "110".

WHEREFORE PARAGRAPH. Defendants deny that plaintiff is entitled to any of the relief demanded in the Wherefore clause of the Complaint or to any other relief.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE THESE
ANSWERING DEFENDANTS ALLEGE AS FOLLOWS:**

The action was not commenced in the time specified under the Statute of Limitations.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE THESE
ANSWERING DEFENDANTS ALLEGE AS FOLLOWS:**

Pursuant to Rule 12(b)(4) and 12(b)(5), defendants Rosanne Haggerty, Nancy Procaro, Oretha Franklin and Michael Giordano present and assert the defenses of insufficiency of service of process and insufficiency of process.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE
THESE ANSWERING DEFENDANTS ALLEGE AS FOLLOWS:**

Upon information and belief the causes of action alleged in the Complaint of the Plaintiff fail to properly state, specify or allege a cause of action on which relief can be granted as a matter of law.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE
THESE ANSWERING DEFENDANTS ALLEGE AS FOLLOWS:**

The Complaint fails to state a claim upon which an award of compensatory and/or punitive damages can be granted.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE
THESE ANSWERING DEFENDANTS ALLEGE AS FOLLOWS:**

That if it is determined that these answering Defendants are responsible for the acts alleged in the Complaint then Plaintiff failed to take appropriate action to mitigate any damages.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE
THESE ANSWERING DEFENDANTS ALLEGE AS FOLLOWS:**

That these answering defendants were not acting under "color of state law" and their conduct does not establish "state action".

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE
THIS ANSWERING DEFENDANT ALLEGES AS FOLLOWS:**

That recovery, if any, on the Complaint of the Plaintiff shall be reduced by the amounts paid or reimbursed by collateral sources in accordance with CPLR 4545(c).

**AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE
THESE ANSWERING DEFENDANTS ALLEGE AS FOLLOWS:**

That all actions taken by these answering Defendants were proper and without malice or wrongful means.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE
THESE ANSWERING DEFENDANTS ALLEGE AS FOLLOWS:**

That any communications made by these answering Defendants were subject to and are protected by Privilege or immunity.

**AS AND FOR A TENTH AFFIRMATIVE DEFENSE
THESE ANSWERING DEFENDANTS ALLEGE AS FOLLOWS:**

The Complaint fails to plead Special Damages.

**AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE
THESE ANSWERING DEFENDANTS ALLEGE AS FOLLOWS:**

These answering defendants are not liable for the acts or omissions of any agent, subcontractor or employee that were beyond the scope of employment or contract.

**AS AND FOR A TWELFTH AFFIRMATIVE DEFENSE
THESE ANSWERING DEFENDANTS ALLEGE AS FOLLOWS:**

That the Answering Defendants did not engage in conscience shocking behavior against the plaintiff.

**AS AND FOR A THIRTEENTH AFFIRMATIVE DEFENSE
THESE ANSWERING DEFENDANTS ALLEGE AS FOLLOWS:**

That the Answering Defendants did not issue process or use process in a perverted manner.

**AS AND FOR A FOURTEENTH AFFIRMATIVE DEFENSE
THESE ANSWERING DEFENDANTS ALLEGE AS FOLLOWS:**

The Complaint fails to state conduct sufficient to hold the individual answering defendants liable.

**AS AND FOR A FIFTEENTH AFFIRMATIVE DEFENSE
THESE ANSWERING DEFENDANTS ALLEGES AS FOLLOWS:**

The Complaint must be dismissed since these answering Defendants have no contractual, privity, implied or other relationship with Plaintiff.

**AS AND FOR A SIXTEENTH AFFIRMATIVE DEFENSE
THESE ANSWERING DEFENDANTS ALLEGE AS FOLLOWS:**

That the Defendants had legitimate non-tortious reason(s) for each action taken.

**AS AND FOR A SEVENTEENTH AFFIRMATIVE DEFENSE
THESE ANSWERING DEFENDANTS ALLEGE AS FOLLOWS:**

Plaintiff's claims are barred, in whole or in part, by the doctrines of laches, waiver, estoppel and unclean hands.

**AS AND FOR AN EIGHTEENTH AFFIRMATIVE DEFENSE
THESE ANSWERING DEFENDANTS ALLEGE AS FOLLOWS:**

Pursuant to CPLR Article 16, the liability of these answering Defendants to the Plaintiff for non-economic loss shall not exceed the equitable share of these Defendants determined in accordance with the relative culpability of each person/party causing or contributing to the total liability for non-economic loss.

**AS AND FOR A CROSS-CLAIM FOR CONTRIBUTION
AGAINST THE NON-ANSWERING DEFENDANTS:**

If plaintiff recovers against these Defendants, then these answering Defendants will be entitled to an apportionment of responsibility for damages between and amongst the parties of this action and will be entitled to recover from each other party for its proportional share commensurate with any judgment which may be awarded to the plaintiff.

**AS AND FOR A CROSS-CLAIM FOR COMMON LAW INDEMNITY
AGAINST THE NON-ANSWERING DEFENDANTS:**

If plaintiff recovers against these answering Defendants, then these answering Defendants will be

entitled to be indemnified and to recover the full amount of any judgment from the non-answering defendants.

WHEREFORE, Defendants demand judgment dismissing the Complaint with prejudice, together with its attorneys' fees, costs and disbursements in this action as well as judgment on its cross-claims. In the event any judgment or settlement is recovered herein against these Defendants, then these Defendants further demand that such judgment be reduced by the amount which is proportionate to the degree of culpability of plaintiff.

DATED: June 27, 2007
New York, New York

Yours, etc.,

HOEY, KING, TOKER & EPSTEIN
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